

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COALITION TO PROTECT PUGET SOUND )  
HABITAT, et al., )  
Plaintiffs, )  
v. )  
UNITED STATES ARMY CORPS OF )  
ENGINEERS, et al., )  
Defendants. )

Case No. 2:21-cv-1685-JCC

ORDER GRANTING JOINT MOTION  
FOR A SCHEDULING ORDER

The matter arises under the Joint Motion filed by Defendants, United States Army Corps of Engineers, *et al.*, and Plaintiffs Coalition to Protect Puget Sound Habitat, *et al.*, to set a schedule regarding the administrative records for judicial review in the above-captioned case. The Joint Motion (ECF No. 24) is GRANTED. The schedule is as follows:

**CASE MANAGEMENT SCHEDULE**

- a. Schedule for the Corps to produce and file the administrative records for Judicial Review in Five Phases:

Event	Date
Phase 1: The Corps will file its certified administrative records for NWP 48 and the Regional Conditions for Seattle District (Re Nationwide Permits) with the Court and provide Plaintiffs with a complete copy of those documents.	July 8, 2022 -OR- If a motion to dismiss is filed, 60

		days from a ruling on that motion, whichever is later
Phase 2: The Corps will file its certified administrative records for no less than 108 LOPs with the Court and provide Plaintiffs with a complete copy of those documents.		120 days after the Corps files the administrative records described in Phase 1 -OR- If a motion to dismiss is filed, 60 days from a ruling on that motion, whichever is later
Phase 3: The Corps will file its certified administrative records for no less than 108 LOPs with the Court and provide Plaintiffs with a complete copy of those documents.		90 days after the Corps files the administrative records for the LOPs described in Phase 2 above
Phase 4: The Corps will file its certified administrative records for no less than 108 LOPs with the Court and provide Plaintiffs with a complete copy of those documents.		90 days after the Corps files the administrative records for the LOPs described in Phase 3 above
Phase 5: The Corps will file its certified administrative records for the last of the 424 LOPs with the Court and provide Plaintiffs with a complete copy of those documents.		90 days after the Corps files the administrative records for the LOPs described in Phase 4 above

- b. Procedure for resolving any disputes among the Parties regarding the contents of the administrative records for NWP 48 and Regional Conditions for Seattle District (Re Nationwide Permits) (Phase 1):

Event	Date
Plaintiffs will identify and communicate to the Corps any issues regarding the completeness of, or disputing, the Corps' certified	45 days after the Corps files the

1 2 3 4 5 6	administrative records for NWP 48 and the Regional Conditions for Seattle District (Re Nationwide Permits) and/or any requests for the admission of extra-record evidence. Plaintiffs will provide the Corps with copies of any materials they have or had access to and which they seek to include in the administrative record or to admit as extra-record evidence. Subject to part d. below, Plaintiffs will also identify any documents, beyond those in the Corps' certified administrative records for the NWP 48 and Regional Conditions for Seattle District (Re Nationwide Permits), that they propose should be considered as part of the adjudication of the ESA claim.	administrative records for NWP 48 and the Regional Conditions for Seattle District
7 8 9 10	For all issues the Parties cannot resolve without adjudication regarding the Corps' certified administrative records for NWP 48 and the Regional Conditions for Seattle District (Re Nationwide Permits), Plaintiffs will file a motion (1) challenging the contents of those records, and/or (2) seeking to admit extra-record evidence. If the Parties cannot resolve disputes regarding documents Plaintiffs proposed for consideration by the Court in adjudicating the ESA claim, Plaintiffs' referenced motion will request that these documents be considered by the Court during the subsequent merits adjudication of the ESA claim.	90 days after the Corps files the administrative records for NWP 48 and the Regional Conditions for Seattle District
11 12	Deadline for the Corps to respond to any administrative record related motion.	4 weeks from the date the motion is filed
13 14	Deadline for Plaintiffs to reply.	3 weeks from the date the Corps' response is filed

- c. Procedure for resolving any disputes among the Parties regarding the contents of the administrative records filed by the Corps for the four phases of LOPs (Phases 2, 3, 4, and 5):

Event	Date
18 19 20 21 22 23 24	45 Days after the Corps files the certified administrative record for the last of the 424 LOPs (Phase 5)
For all issues the Parties cannot resolve without adjudication regarding the Corps' certified administrative records for the three phases of LOPs, Plaintiffs will file a motion challenging the contents of those records and/or seeking to admit extra-record evidence.	90 days after the Corps files the certified administrative records for the last

	of the 424 LOPs (Phase 5)
Deadline for the Corps to respond to any administrative record related Motion.	4 weeks from the date the motion is filed
Deadline for Plaintiffs to reply.	3 weeks from the date the Corps' response is filed

d. Procedure for resolving disputes regarding documents for consideration by the Court upon adjudicating the ESA claims:

Unless previously resolved through the procedures in part b. above, before the Parties propose a schedule for briefing motions for summary judgment on the ESA claim, (1) Plaintiffs will identify any documents, beyond those that the Court previously ruled are to be included as part of the administrative records for the NWP 48 and Regional Conditions for Seattle District (Re Nationwide Permits) or that the Court will consider as extra-record evidence, that they propose should be considered as part of the adjudication of the ESA claim; and (2) if the Parties cannot resolve disputes regarding such documents Plaintiffs propose for consideration by the Court in adjudicating the ESA claim, Defendants will file a motion to resolve any such disputes. The parties agree that summary judgment briefing on the ESA claim should be deferred or stayed until after the Court resolves any dispute regarding documents Plaintiffs propose for consideration by the Court in adjudicating the ESA claim.

Dated this 11th day of July, 2022



David W. Christel  
United States Magistrate Judge

1 Presented by:

2 TODD KIM  
3 Assistant Attorney General  
4 Environment & Natural Resources Division

4 /s/ David Kaplan  
5 DAVID KAPLAN  
6 Environmental Defense Section  
7 Environment and Natural Resources Division  
8 United States Department of Justice  
9 P.O. Box 7611  
10 Washington, DC 20044  
11 (202) 514-0997  
12 David.Kaplan@usdoj.gov

9 AMANDA M. STONER  
10 MD Bar No. 2012180040  
11 United States Department of Justice  
12 Environment & Natural Resources Division  
13 Natural Resources Section  
14 P.O. Box 7611  
15 Washington, DC 20044  
16 T: (202) 598-0881  
17 F: (202) 305-0275  
18 Amanda.Stoner@usdoj.gov

14 MARK ARTHUR BROWN  
15 Wildlife and Marine Resources Section  
16 Environment and Natural Resources Division  
17 United States Department of Justice  
18 P.O. Box 7611  
19 Washington, DC 20044  
20 (202) 305-0204  
21 mark.brown@usdoj.gov

19 *Attorneys for U.S. Army Corps of Engineers et al.*

20 /s/ Karl Anuta  
21 Karl G. Anuta (WSB No. 21346)  
22 Law Office of Karl G. Anuta, P.C.  
23 735 SW 1st Ave., 2nd Floor  
24 Portland, OR 97204  
(503) 827-0320  
kga@integra.net

1 *Attorney for Plaintiff Coalition to Protect Puget Sound Habitat*

2 /s/Amy van Saun

3 George A. Kimbrell (WSB No. 36050)

4 Amy van Saun (pro hac vice)

5 Center for Food Safety

6 2009 NE Alberta Street, Suite 207

(971) 271-7372

gkimbrell@centerforfoodsafety.org

avansaun@centerforfoodsafety.org

7 *Attorneys for Plaintiff Center for Food Safety*